

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 17 2004

Federal Communication Commission
Bureau / Office

In the Matter of)

)
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(St. Florian, Alabama)

) MB Docket No. 04-80
) RM-10875
)
)

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MAY 18 2004

Federal Communications Commission
Office of the Secretary

TO: Chief, Audio Division
Media Bureau

COMMENTS OF BCB, INC.

BCB, Inc., by counsel, hereby submits its Comments in opposition to the Petition for Rulemaking filed in the above-identified proceeding on November 19, 2003 by American Family Association ("AFA"), proposing the reservation for exclusive noncommercial use of Channel 274A at St. Florian, Alabama. The FCC has released a *Notice of Proposed Rulemaking*, DA 04-780, released March 26, 2004, proposing to adopt AFA's suggestion and soliciting public comment about it.

BCB is the licensee of WBCF(AM), Florence, Alabama. As shown below, AFA's calculations in support of its assertion that the St. Florian allotment should be reserved are erroneous, and AFA's Petition should be denied. An engineering report is attached that supports BCB's assertions. If the FCC rejects the proposal to reserve the St. Florian allotment, BCB intends to apply for a construction permit for a commercial FM station on this channel. If its application is granted, BCB will promptly construct the new station and initiate new commercial aural service for St. Florian.

The Commission adopted principles for the reservation of certain existing commercial FM allotments in the *Report and Order in Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, 15 FCC Rcd. 7386, at 7434 (2000); and refined them in the *Second Report and Order* in the same proceeding, 18 FCC Rcd. 6691 (2003). The process is codified in §73.202(a)(1)(ii) of the Commission's rules. Pursuant to these procedures, a proponent of reservation is required to demonstrate that the area to receive service from the new allotment is underserved with respect to noncommercial FM service. It must show that at least 10% of the population within the allotment service area receives no or only one noncommercial service. If the allotment service area can be shown to be underserved by this definition, the proponent then must demonstrate that it would be technically precluded from establishing a new noncommercial FM station to serve the allotment community on an existing reserved channel.

AFA has proposed the reservation of the St. Florian allotment, purportedly pursuant to those procedures. However, AFA's technical demonstration is flawed. In attempting to show that the service area of the St. Florian allotment is underserved by existing noncommercial stations, AFA was inconsistent in its calculations with respect to existing construction permits for noncommercial stations. Two noncommercial stations on reserved channels that provide partial coverage in the subject area, WFIX, Florence, Alabama, and WDNX, Olive Hill, Tennessee, each has a construction permit to upgrade its facilities and neither has as yet filed an application for a license to cover its permit. Thus, from the Commission's database, it appears that neither of those stations is as yet providing actual service in the expanded areas authorized by the permits. Without explanation as to why, AFA performed its calculations taking into account the WFIX construction permit, but only the licensed facilities – and not the construction

permit – for WDNX. The Commission’s rules and the orders establishing this procedure are unclear about which methodology is preferred or mandated. Consequently, BCB’s attached engineering report provides calculations under both scenarios – each internally consistent. That is to say, one calculation is performed using the coverage statistics for the construction permits for both WFIX and WDNX. The other calculation relies upon only the licensed facilities for those two stations. If the construction permit coverage areas are used, only 9.47% of the population in the St. Florian allotment service area would be underserved with existing noncommercial service. Failing to meet the 10% threshold, AFA’s proposal would be instantly rejected under this calculation.

However, a calculation using the licensed coverage figures for WFIX and WDNX yields a result showing more than 10% of the population of the St. Florian allotment service area to be underserved. It is then necessary for the opponent of the reservation to rebut AFA’s preclusion study that purportedly indicates that no new comparable class station could be established on a reserved channel. BCB has successfully rebutted AFA’s preclusion showing in the attached engineering report where it is demonstrated that a new noncommercial station can be established on Channel 213. A station on this channel could provide the legally required level of service to St. Florian, and would at the same time provide a first or second noncommercial service to a population equal to 12.39% of the population within the St. Florian allotment service area.

WHEREFORE, BCB has successfully rebutted AFA's claim that there is a need for the reservation of the Channel 274A at St. Florian. BCB respectfully urges the Commission to deny AFA's Petition to reserve that channel for noncommercial use.

Respectfully submitted,

BCB, Inc.

By: 
Donald E. Martin

DONALD E. MARTIN, P.C.
P.O. Box 8433
Falls Church, Virginia 22041
(703) 642-2344
Email: dempc@prodigy.net

Its Attorney

May 17, 2004

ENGINEERING REPORT

Statement of NCE Channel Reservation Preclusion

Concerning

ALLO 274A – Saint Florian, AL

May, 2004

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MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

DISCUSSION

The firm of Munn-Reese, Inc., was retained to prepare this report analyzing the potential for the reservation of Allocation Channel CH274A, Saint Florian, Alabama for non-commercial use. The methodology used in this determination has been taken from MM Docket No. 95-31, Second Report and Order, concerning the Reexamination of the Comparative Standard for Non-Commercial Education Applicants. Based on alternate interpretations of paragraphs 33 through 38 of the Second Report and Order, the Saint Florian CH274A allotment may not be reserved for NCE use. As explained more fully below, under one interpretation, a maximum class CH274A facility would fail to provide at least 10% of its service area with first or second NCE service. Under the alternate interpretation, CH274A does meet the 10% first or second NCE service requirement; however, the allotment still may not be reserved because NCE channel CH213A offers acceptable service. Regardless of interpretation, CH274A may not be reserved for NCE use.

The Commission has determined that a vacant FM allotment can be reserved for NCE broadcasting if both of the following two conditions are satisfied:

1. Under-Served Population. A maximum class facility built at the allotment site would provide first or second NCE service to at least ten percent of the population within its service area. At least 2000 persons must receive first or second NCE service. *Second Report and Order*, 18 FCC RCD 6691, at para. 34, March 4, 2003.
2. Technical Preclusion Showing. No reserved band frequency is available which could be used to cover the under-served population identified in Step One (testing from five different sites). *Second Report and Order*, 18 FCC RCD 6691, at para. 35-36, March 4, 2003.

A Petition filed by the American Family Association purports to show allotment CH274A will provide 10% of the 60 dBu contour population with first or second service¹. Inspection of the American Family filing shows inconsistencies in the selection of NCE licenses versus NCE Construction Permits used for calculating first and second NCE service, particularly when both a license and Construction permit are present for the same station.

Recalculation of the American Family first and second service by their own standard fails to meet 10% of the CH274A 60 dBu population. A service study has been included in **Exhibit 1.1**. American Family used Construction Permit BPED-20020613AAI for WFIX.C Floriance, AL in lieu of the WFIX.L license, but failed to include Construction Permit BPED-20020610AAB for WDNX.C, Olive Hill, TN. Instead American Family used the smaller WDNX.L licensed operation. Use of the smaller WDNX.L contour yields a first and second population above the minimum threshold as American Family contends. However, use of all NCE Construction Permit facilities including WDNX.C, yields a first and second population of 9.47% which categorically excludes CH274A from NCE reservation. Under this interpretation, no further showings are needed.

Alternately, consideration was given to using only full service licensed NCE facilities. Using only full service licensed NCE facilities does in fact provide CH274A with more than 10% of first or second NCE service, however this is irrelevant in light of additional showings. Paragraph 37 clearly states the designated reservation procedure may still be rebuttable. "A reservation showing will be conclusively rebutted if a party that desires a non-reserved allotment can both identify a single location from which a facility with a class-permissible power/height combination can be authorized in compliance with the rules, and show, with respect to that location, that the specified facilities would satisfy the 'first or second service' criterion." *Second Report and Order*, at para. 37. One such channel exists.

¹ DA 03-2990 Attachment A-1, No 10 Received and Inspected by FCC Mailroom Nov 19, 2003 for CH274 St. Florian, AL

Exhibit 2.1 is an NCE allocation study for CH213A. This study has been conducted from a special reference point and is fully licensable under Commission Rules with regard to interference protection and community coverage. Parameters within Class A specifications of 2.8 kW ERP at 100 meters HAAT have been employed. These parameters meet or exceed the minimum Class A standards set forth in §73.211 and §73.212. A directional pattern in accordance with §73.316 has also been employed for CH213A. A copy of the pattern has been included in **Exhibit 2.2**. The transmitter site is outside of the affected radius of any Channel 6 television station. A coverage map showing more than 50% coverage² of Saint Florian, AL has also been provided in **Exhibit 2.3**.

The availability of a reserved band channel triggers a "first or second" NCE service study as dictated by paragraph 36. Paragraph 36 states: "In the event that an NCE station can be licensed on one or more channels at any of these five sites in compliance with the NCE technical rules, the reservation showing must undertake a 'first or second service' analysis of the technically acceptable facilities at each acceptable site. If any analyzed facility would satisfy the 'first or second service' criterion, the allotment will not be reserved." *Second Report and Order*, at para. 36. Analysis of the Class CH213A facility 60 dBu contour yields a first or second NCE service population of 15,645 people, as seen in **Exhibit 3.1**. Thus, the "first or second service" population covered by the reserved Channel 213A facility is 12.39% of the population in the Channel CH274A allotment, making CH213A a viable alternate NCE Channel for rebuttal purposes.


Therefore, the CH274A Allotment for Saint Florian, AL fails the criteria for NCE channel reservation regardless of the interpretation for using NCE Licenses and/or Construction Permits.

CERTIFICATION OF ENGINEERS

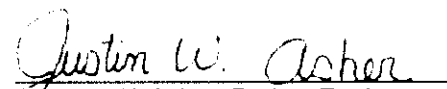
The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 385 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report. I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

May 17, 2004

MUNN-REESE, INC.




By: 
Wayne S. Reese, President

385 Airport Drive, PO Box 220
Coldwater, Michigan 49036
Telephone: 517-278-7339

By: 
Justin W. Asher, Project Engineer

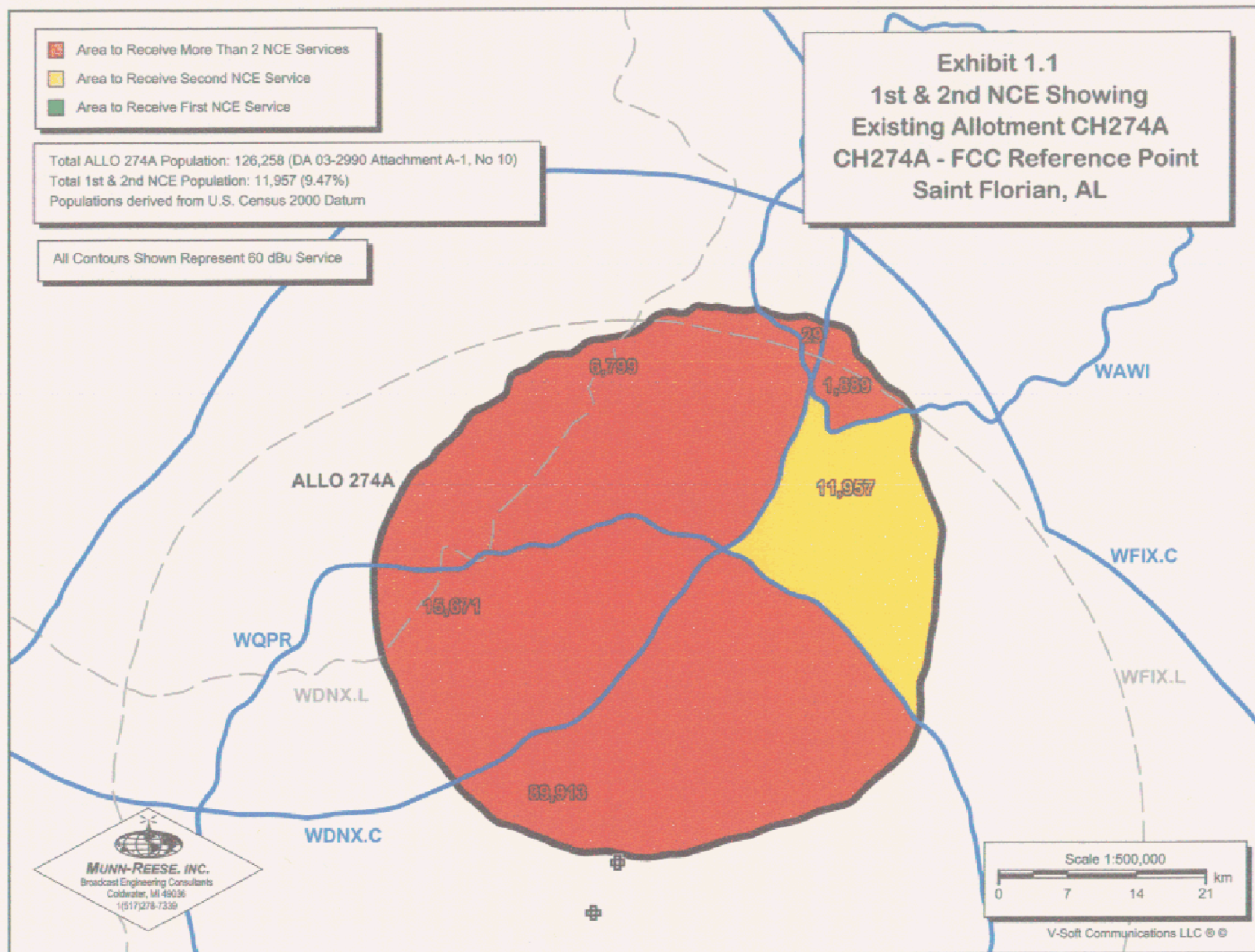
² See §73.515.

Exhibit 1.1
1st & 2nd NCE Showing
Existing Allotment CH274A
CH274A - FCC Reference Point
Saint Florian, AL

-  Area to Receive More Than 2 NCE Services
-  Area to Receive Second NCE Service
-  Area to Receive First NCE Service

Total ALLO 274A Population: 126,258 (DA 03-2990 Attachment A-1, No 10)
 Total 1st & 2nd NCE Population: 11,957 (9.47%)
 Populations derived from U.S. Census 2000 Datum

All Contours Shown Represent 60 dBu Service



MUNN-REESE, INC.
 Broadcast Engineering Consultants
 Coldwater, MI 49036
 1/517/278-7339

V-Soft Communications LLC ©

Exhibit 2.1

Alternate Non-Commercial Allocation Study

Channel 213A - Saint Florian, AL

| REFERENCE | | CH# 213A - 90.5 MHz, Pwr= 2.8 kW, HAAT=100.0 M, COR= 305 M | | | | | | | | DISPLAY DATES | |
|--|---------|--|------------------|--------|----------|----------|----------|----------------------------|-----------------|-----------------|--|
| 34 57 08 N | | Average Protected F(50-50)= 23.85 km | | | | | | | | DATA 05-01-04 | |
| 87 33 09 W | | Ave. F(50-10) 40 dBu= 74.9 54 dBu= 36.0 80 dBu= 7.5 100 dBu= 2.2 | | | | | | | | SEARCH 05-10-04 | |
| CH | CALL | TYPE | AZI. | DIST | LAT. | Pwr(kW) | COR(M) | PRO(km) | *IN* | *OUT* | |
| CITY | STATE | | <-- | FILE # | LNG. | HAAT (M) | INT (km) | LICENSEE | (Overlap in km) | | |
| 212C WPLNFM | LIC CN | 27.7 | 136.10 | | 36 02 08 | 80.000 | 580 | 75.5 | 4.27 | 30.54 | |
| Nashville | TN | 207.7 | BLED19840320AA | | 86 50 56 | 373 | 111.4 | Nashville Public Radio | | | |
| 213A 990506 | APP CX | 288.2 | 95.13 | | 35 12 53 | 6.000 | 226 | 25.0 | 2.54 | 35.89 | |
| Selmer | TN | 108.2 | BPED19990506MC | | 88 32 44 | 77 | 82.4 | Broadcasting For The Chall | | | |
| 213A 990506 | APP CN | 288.2 | 95.13 | | 35 12 53 | 6.000 | 231 | 25.7 | 1.59 | 35.15 | |
| Selmer | TN | 108.2 | BPED19990506MC | | 88 32 44 | 82 | 83.4 | Broadcasting For The Chall | | | |
| 213A 971027 | APP CN | 287.2 | 98.26 | | 35 12 33 | 5.800 | 252 | 27.5 | 2.70 | 36.43 | |
| Selmer | TN | 107.2 | BPED19971027MA | | 88 35 01 | 96 | 85.4 | American Family Associatio | | | |
| Amended 980715 | | | | | | | | | | | |
| 210A WAKD | LIC DVX | 206.3 | 14.34 | | 34 50 11 | 0.301 | 242 | 9.5 | 0.45 | 3.92 | |
| Sheffield | AL | 26.3 | BLED20030422AAE | | 87 37 20 | 48 | 1.2 | American Family Associatio | | | |
| 213C WSMCFM | LIC DCN | 80.3 | 214.76 | | 35 15 20 | 99.834 | 705 | 59.9 | 34.86 | 81.04 | |
| Collegedale | TN | 260.3 | BLED19940222KF | | 85 13 34 | 161 | 156.7 | Southern College Of Sevent | | | |
| 214A WAUO | LIC CN | 359.6 | 68.05 | | 35 33 56 | 0.500 | 314 | 12.3 | 30.04 | 26.34 | |
| Hohenwald | TN | 179.6 | BLED19980120KD | | 87 33 27 | 63 | 18.0 | American Family Associatio | | | |
| 266D AP266 | APP C | 223.6 | 13.42 | | 34 51 53 | 0.125 | 206 | 6.0 | 5.5R | 7.9M | |
| Florence | AL | 43.6 | BNPFT20030829AFA | | 87 39 14 | 5 | 6.0 | Clear Channel Broadcasting | | | |
| 266D AP266 | APP C | 223.6 | 13.42 | | 34 51 53 | 0.250 | 206 | 7.1 | 5.5R | 7.9M | |
| Florence | AL | 43.6 | BNPFT20030317ANY | | 87 39 14 | 5 | 7.1 | Clear Channel Broadcasting | | | |
| 215C1 WJAB | LIC CN | 101.3 | 92.01 | | 34 47 09 | 100.000 | 339 | 47.6 | 63.25 | 42.25 | |
| Huntsville | AL | 281.3 | BLED19910429KA | | 86 34 00 | 84 | 5.3 | Alabama A & M University | | | |
| 210D W210BE | LIC CN | 333.6 | 43.32 | | 35 18 05 | 0.027 | 279 | 4.0 | 28.98 | 37.82 | |
| Waynesboro | TN | 153.6 | BLFT19970701TB | | 87 45 55 | -6 | 0.4 | American Family Associatio | | | |
| Translator for WAFRFM, Tupelo, MS | | | | | | | | | | | |
| 211C3 WOCG | LIC CN | 104.6 | 84.23 | | 34 45 28 | 25.000 | 294 | 33.4 | 57.41 | 48.62 | |
| Huntsville | AL | 284.6 | BLED19780906AO | | 86 39 44 | 71 | 3.4 | Oakwood College | | | |
| 212C1 WBHM | LIC CN | 156.7 | 176.56 | | 33 29 19 | 32.000 | 566 | 67.9 | 63.12 | 87.83 | |
| Birmingham | AL | 336.7 | BLED19880929KC | | 86 47 58 | 400 | 99.6 | Bd Of Trustees/u Of Al At | | | |
| 212C WMAVFM | LIC V | 250.2 | 210.66 | | 34 17 28 | 100.000 | 487 | 76.3 | 87.49 | 118.42 | |
| Oxford | MS | 70.2 | BLED20010302AAM | | 89 42 21 | 353 | 112.1 | Mississippi Authority For | | | |
| 213A 990318 | APP VN | 201.2 | 169.06 | | 33 31 49 | 6.000 | 189 | 27.2 | 71.27 | 99.25 | |
| Columbus | MS | 21.2 | BPED19990318MJ | | 88 12 47 | 92 | 85.3 | Broadcasting For The Chall | | | |
| Vertical Polarizaton Only - Amended 990729 | | | | | | | | | | | |
| 06-2C WBRC | LI CY | 156.7 | 176.56 | | 33 29 19 | 100.000 | 615 | 115.8 | To Grd B= | 60.78 | |
| Birmingham | AL | 336.7 | BLCT19880229KI | | 86 47 58 | 449 | | Wbrc License, Inc. | | | |

ERP and HAAT are on direct line to and from reference station.

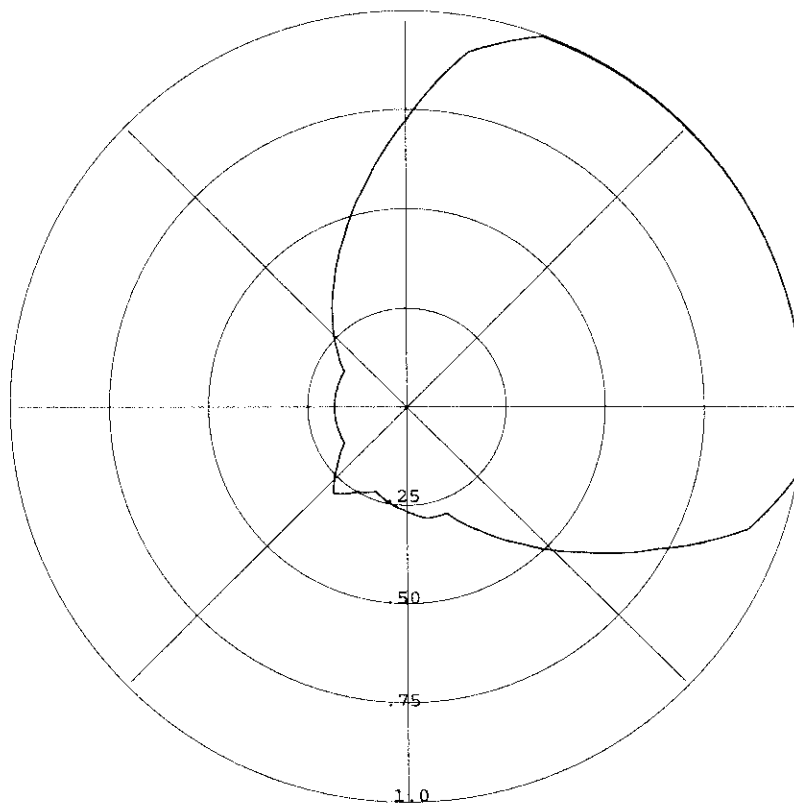
Exhibit 2.2

Directional Pattern Study

Channel 213A - Saint Florian, AL

Bearing Field Value

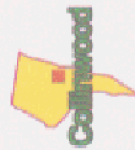
| | | |
|-----|---|-------|
| 000 | = | 0.726 |
| 010 | = | 0.914 |
| 020 | = | 1.000 |
| 030 | = | 1.000 |
| 040 | = | 1.000 |
| 050 | = | 1.000 |
| 060 | = | 1.000 |
| 070 | = | 1.000 |
| 080 | = | 1.000 |
| 090 | = | 1.000 |
| 100 | = | 1.000 |
| 110 | = | 0.915 |
| 120 | = | 0.727 |
| 130 | = | 0.577 |
| 140 | = | 0.459 |
| 150 | = | 0.364 |
| 160 | = | 0.289 |
| 170 | = | 0.289 |
| 180 | = | 0.267 |
| 190 | = | 0.250 |
| 200 | = | 0.230 |
| 210 | = | 0.250 |
| 220 | = | 0.289 |
| 230 | = | 0.230 |
| 240 | = | 0.182 |
| 250 | = | 0.182 |
| 260 | = | 0.182 |
| 270 | = | 0.182 |
| 280 | = | 0.182 |
| 290 | = | 0.182 |
| 300 | = | 0.182 |
| 310 | = | 0.230 |
| 320 | = | 0.289 |
| 330 | = | 0.364 |
| 340 | = | 0.458 |
| 350 | = | 0.577 |



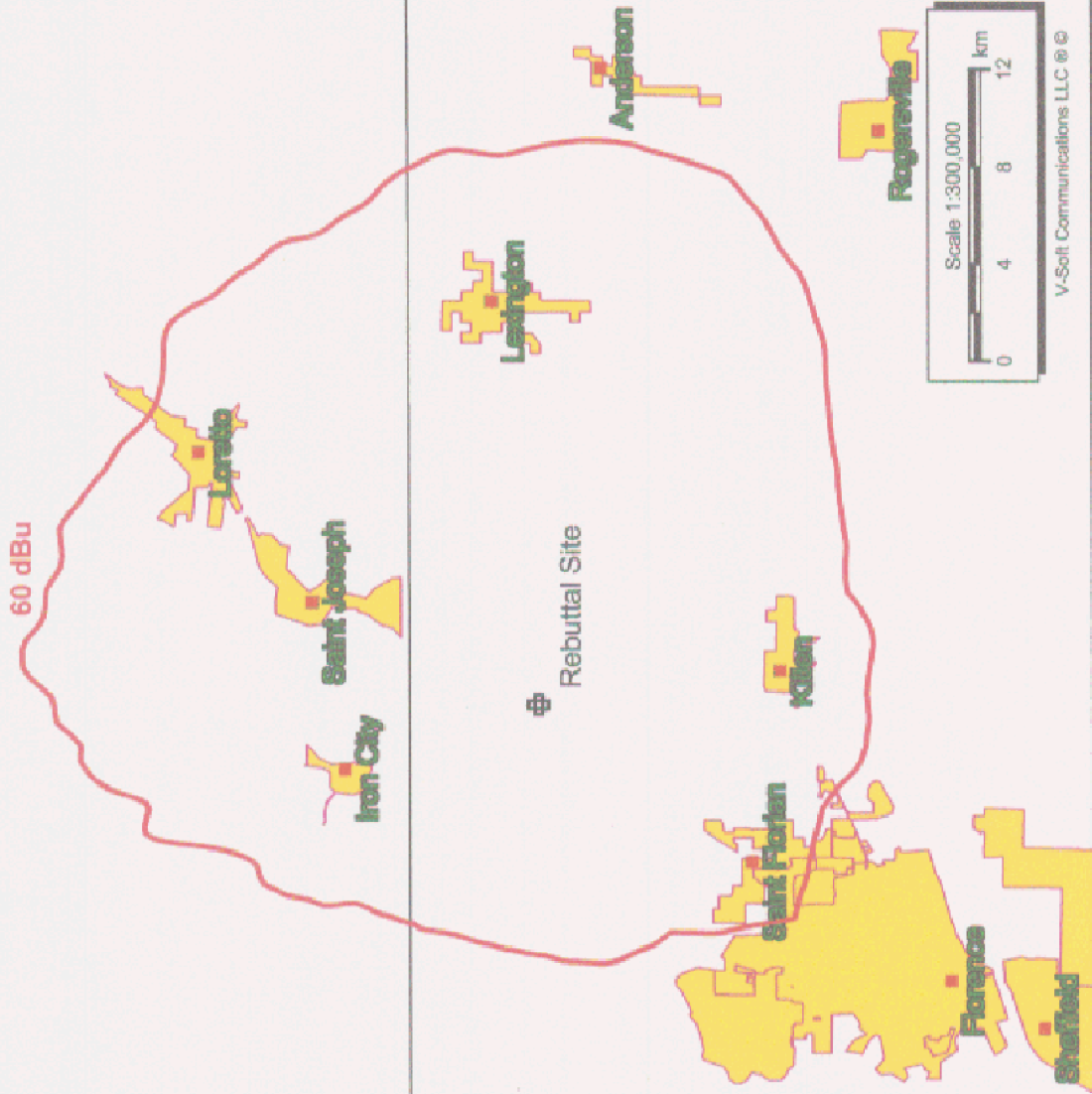
Rebuttal Site - CH213A
 Saint Florian, AL
 Latitude: 34-57-08 N
 Longitude: 087-33-09 W
 ERP: 2.80 kW
 HAAT: 100.0 m
 Channel: 213
 Frequency: 90.5 MHz
 AMSL Height: 303.28 m
 Horiz. Pattern: Directional
 Vert. Pattern: No
 Prop Model: None

Exhibit 2.3

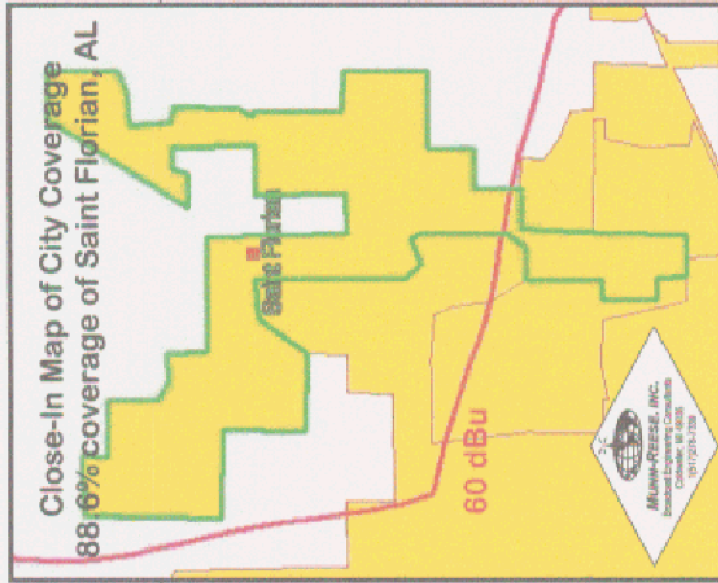
Alternate Non-Commercial Proposed Service Area Channel 213A - Saint Florian, AL



60 dBu



Close-In Map of City Coverage 88.6% coverage of Saint Florian, AL



- Area to Receive More Than 2 NCE Services
- Area to Receive Second NCE Service
- Area to Receive First NCE Service

Total ALLO 274A Population: 126,256 (DA 03-2390 Attachment A-1, No 10)
 Total 1st & 2nd NCE Population: 15,645 (12.39%)
 Populations derived from U.S. Census 2000 Datum

All Contours Shown Represent 60 dBu Service

Exhibit 3.1

1st & 2nd NCE Showing Alternate Channel 213A Special Reference Point Saint Florian, AL

37

WAWI

WFX.L

1,518

15,602

Rebuttal Site

13,924

CH213A

WDNX.L

WQPR



V-Soft Communications LLC ©



CERTIFICATE OF SERVICE

I, Donald E. Martin, hereby certify this 17th day of May, 2004, that I have caused a copy of the foregoing document to be served by United States mail with first class postage prepaid upon the following:

Patrick J. Vaughn, Esquire
American Family Association
P.O. Drawer 2440
Tupelo, Mississippi 38803

A handwritten signature in cursive script that reads "Donald E. Martin". The signature is written in black ink and is positioned above a horizontal line.

Donald E. Martin